

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TIMMY McDONALD,

Plaintiff,

v.

UNITED STATES OF AMERICA,
S.L. HAMLING, DEBORAH LIVINGSTON,
K.M. WHITE, HARRELL WATTS,
UNKNOWN NAMED EMPLOYEES OF
FCI-GILMER,

Defendants.

FILED
OCT 14 2008
U.S. DISTRICT COURT
ELKINS WV 26241
Civil Action No. 2:07cv82

ORDER

It will be recalled that on September 16, 2008, Magistrate Judge Kaull filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On September 29, 2008, Plaintiff filed his Objections to Magistrate's Report and Recommendation.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, brought pursuant to Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), and the Federal Tort Claim Act, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Upon review of the Plaintiff's objections, the Court finds that the Plaintiff has not raised any issues that were not already throughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of

the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's Complaint against the Defendants shall be, and the same hereby is, **DISMISSED** pursuant to 28 U.S.C. §§1915(e) and 1915A for failure to state a claim upon which relief may be granted. It is further

ORDERED that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk shall enter judgment for the Defendants. It is further

ORDERED that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: October 14th 2008


United States District Judge